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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of )

)  
Eligibility for the Specialized )  
Mobile Radio Services )  
and Radio Services in the )  
220-222 MHz Land Mobile Band )  
and Use of Radio Dispatch )  
Communications )

GN Docket No. 94-90

**COMMENTS OF**  
**EAST OTTER TAIL TELEPHONE COMPANY**

East Otter Tail Telephone Company ("East Otter Tail"), by its attorneys, hereby submits its Comments in support of the captioned Notice of Proposed Rule Making, released August 11, 1994. East Otter Tail believes that Commission Rule Section 90.603(c) should be modified to eliminate the prohibition against wireline provision of SMR service. For one, the Commission's original rationale for restricting wireline entry are no longer relevant. Perhaps even more importantly, elimination of the current wireline prohibition will bring much-needed SMR services to East Otter Tail's rural Minnesota service area and to other rural areas which the larger SMR providers have chosen not to service.

**Interest Of East Otter Tail**

East Otter Tail is an independent local exchange carrier ("LEC") serving residents and businesses in rural, western Minnesota. East Otter Tail stands ready, willing, and able to construct and operate SMR facilities in its telephone service area and desires to do so without the regulatory restraints currently

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imposed by the Section 90.603(c) wireline restriction.

**Elimination Of The Wireline Restriction  
Will Benefit the Public Interest and  
Bring Service and Competition To Rural Areas**

While most metropolitan areas currently have long waiting lists for 800 MHz SMR frequencies and have been forced to conduct lotteries for available 900 MHz SMR frequencies, See Amendment of Part 90, Subparts M and S, 3 FCC 1838, 64 RR 2d 1042, 1043 (1988), many rural regions of the country, by contrast, remain largely or completely unserved. In such areas, potential SMR customers continue to wait for the private carriers who, uninhibited by wireline telephone companies, were expected to provide SMR services in the years following the adoption of the 1974 restriction on wireline eligibility. See Second Report and Order, Docket No. 18262, 46 FCC 2d 752 (1974). For many residents of rural areas, that service never came, despite Commission attempts to encourage the growth and development of rural SMR service by, for example, permitting rural SMR licensees to expand their trunked systems without meeting loading requirements. 47 C.F.R. §90.631(d); Amendment of Part 90, Subparts M and S, supra at para. 71. To date, there remains relatively little SMR service in rural areas.

In western Minnesota, for example, farmers and businesses could operate much more efficiently if they had access to reliable and reasonably-priced SMR dispatch communications that would permit them to maintain contact with their trucks, tractors, and other vehicles throughout the day. Likewise, interconnected SMR services represent an attractive service option for rural residents who live

or travel outside reliable cellular coverage areas, or who cannot or do not want to pay generally higher cellular service rates.

Lifting the ban on wireline provision of SMR services will finally bring SMR to the many unserved and underserved regions of the country. Indeed, for many rural regions of the country, wireline entry may provide the only source of SMR service. Even in regions where SMR service is currently available, the SMR provider is usually a single, strongly entrenched entity who, due to lack of competition, may have little or no incentive to provide first-rate service. In such regions, involvement of wirelines will create competition where competition never existed before, thereby increasing the value of the SMR services provided and consequently benefitting the public.

East Otter Tail, together with other independent rural telephone companies, has a proven record of furnishing advanced, high-quality service to its wireline customers. Indeed, independent rural telephone companies have installed upgraded digital switching facilities at a significantly faster pace than several of the larger Regional Bell Operating Companies ("RBOCs"). Edwin B. Parker & Heather E. Hudson, Electronic Byways: State Policies for Rural Development Through Telecommunications, 235-38 (The Aspen Institute, Westview Press, 1992). Accordingly, the Commission can depend upon rural telephone companies like East Otter Tail to provide the capital and expertise necessary to develop existing and future SMR services within their areas.

**The Commission's Rationale For  
The Wireline/SMR Eligibility Restriction No Longer Exists**

The Commission originally prohibited wireline provision of SMR services with the following goals in mind: (1) preserving the historical distinction between private and common carrier services; (2) preventing state entry and rate regulation of SMR providers; and (3) fostering competition by (a) ensuring that SMR operations remained available for small entrepreneurs and (b) preventing discriminatory interconnection practices by wirelines. Order, 7 FCC Rcd 4398 (1992). However, changes in the Communications Act and the SMR industry have wholly eliminated the need for the wireline restriction.

Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 amended Section 332 of the Communications Act to create regulatory parity among similar mobile service. Under regulatory parity, SMR systems providing interconnected service will be treated as common carriage services. 47 C.F.R. § 20.9(a); Second Report And Order in Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd 1411, 1451, 1468, 1510 (1994). Even non-interconnected SMR systems may be classified and regulated under the CMRS rules if they are found, on a case-by-case basis, to be functionally equivalent to CMRS providers. Id. at 1447-48. Like wirelines, SMR operators will be common carriers.

In addition, the Commission recently determined that all CMRS services (including SMR, cellular and Broadband PCS) are competing services or at least have the potential to become competing services. Third Report And Order on Implementation of Sections

3(n) and 332 of the Communications Act, FCC 94-212, paras. 10-14 and 37-79, released September 23, 1994. As such, they are "substantially similar" services and should be subject to comparable regulatory treatment. Id. Therefore, because there are no significant restrictions against wirelines obtaining cellular licenses, 47 C.F.R. §§ 22.901, 22.902, or Broadband PCS licenses, Broadband PCS Second Report And Order, 8 FCC Rcd 7700, 7751-52 (1993), regulatory parity dictates that there should similarly not be any significant restrictions against wireline companies holding SMR licenses.

In addition, the concern over state entry and rate regulation has been eliminated by Section 6002(c) of the Omnibus Budget Reconciliation Act of 1993. That provision amended Section 332(c) of the Act to preempt all state entry and most state rate regulation of commercial SMR services. Thus, there is no longer a need for the Commission to restrict wireline entry into the SMR business, in order to protect SMR providers from state entry and rate regulation.

Also, the basis for the Commission's original concerns that SMR services be preserved for small entrepreneurs has been largely eliminated in light of the acquisition of SMR operations by large, national SMR operators such as Nextel, E.F. Johnson, and Motorola. East Otter Tail, like most rural telephone companies, is locally owned and operated and is just a fraction of the size of the large SMR operators. By responding quickly and effectively to the local needs of their regional customers, rural telephone companies have

survived in the wireline industry. For the same reason, they should excel in the SMR field, providing options and benefits not heretofore available to residents of many rural areas.

Finally, the exemplary record of wireline telephone companies in furnishing nondiscriminatory interconnection to competitors in the cellular industry provides evidence that they will not engage in discriminatory interconnection practices with respect to the SMR industry. The Commission's recent Second Report And Order, supra at 1497-98, requires LECs to provide reasonable and fair interconnection for all commercial mobile radio services, and to provide the type of interconnection reasonably requested by CMRS providers. Id. Indeed, these CMRS interconnection requirements ensure that wireline telephone companies entering the SMR industry will not engage in discriminatory interconnection practices against competing SMR providers.

**The Commission's Dispatch Prohibition  
Should Also Be Eliminated**

The common carrier provision of dispatch service must also be eliminated in order that rural telephone companies like East Otter Tail may compete effectively in rural SMR industry markets. For one, there are substantial unmet needs on the part of Minnesota farmers and businesses that will be effectively satisfied with reasonably priced dispatch services. Additionally, in light of regulatory parity, the common carrier dispatch prohibition no longer makes sense. If SMR licensees are classified as CMRS providers and treated as common carriers, Second Report And Order,

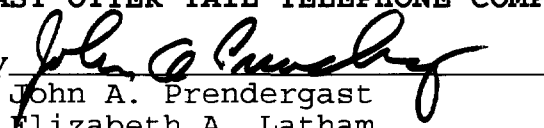
supra at 1451, 1468, 1510, there will be no non-common carriers remaining to furnish dispatch service.

**Conclusion**

For the foregoing reasons, East Otter Tail respectfully requests that the Commission eliminate the existing restrictions upon wireline provision of SMR service and upon common carrier provision of dispatch service.

Respectfully submitted,  
**EAST OTTER TAIL TELEPHONE COMPANY**

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